1945

File No. O. Society Registration 45

Legal Department

A **BRANCH**

Subject:— Opinions under the Societies Registration Act, 1860

(18/E)

File No. U. Society Registration/45

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Office of the R.L.A

Voting by proxy is permissible under section 13 of the Societies Registration Act, 1860. Proxy is a particular form of attorney and would be liable to a stamp duty of two annas under Article 52 in Schedule I to the Indian Stamp Act provided it is limited to the exercise of the right at any one meeting; otherwise it would be liable to a stamp duty as a General power of attorney.

Id/- P.N.M.

3-2-45.

Remembrancer of Legal Affairs.

U.R. to H.D.,No. 1050, dated the 3rd February 1945.

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Office of the R.L.A.

The attention of Home Department (Special) is invited to the R.L.A's opinion dated the 28th October 1944(a copy of which is herewith forwarded) which was given on an informal reference from the Commissioner, Central Division. As pointed out in Para. 5 of that opinion since the trusts to be administered by the Board would take effect only after the amount has been set apart for a particular decree the trusts of the amount so set apart would be all private trust and would accordingly be governed by the provisions of the Indian Trusts Act, which applies to private trusts. Section 78 of that Act provides :-

" A trust created by will may be revoked testator.

A trust otherwise created can be revoked only -

(a) where all the beneficiaries are competent to contract by their consent;

(b) where the trust has been declared by a non-testamentary instrument or by word or mount - in exercise of revocation expressly reserved to the author of the trust; or

(c) where the trust is for the payment of debts of author etc."

Under section 79 no trust can be revoked by the author of the trust so as to defeat or prejudice what the trustee may have duly done. It is therefore clear that once the trust is created by transferring the money to the Board for administration for the benefit of a particular decree and his family it would be impossible for any Government either present or future to revoke the trust. No formal deed of trust is necessary, still less to constitute a legal obligation binding the trustee (see All India Spinners Association v. Commissioner of Income-Tax 47 B.L.R. 233). There is therefore no need of converting the Board into a registered society. Further, a society can be registered under the Societies Registration Act, 1860 only if it is established for the promotion of literature, science or the fine arts or for the diffusion of useful knowledge, the diffusion of political education or for charitable purposes. Since the Board is established in the present case for the purpose of administering private trusts, it cannot be deemed to be established for any of the purposes under the Societies Registration Act. Consequently the Board cannot be registered under the Societies Registration Act.

Id/- P.N.M. 31/5/45
Remembrancer of Legal Affairs

U.R.toH.D.(Special)NO.4193,dt.1stJune 1945.

Office of the R.L.A.

In supersession of the orders issued in Government Resolution, Home Department (Political)No.S.D. III/1006, dated the 17th June 1942 Government by G.R., H.D.(Political) -War, No.S.D.II/45 dated the 6th January 1945, has directed that the Bombay Provincial Sailors', Soldiers' and Airmen's Board should be reconstituted as follows :-

Patron

His Excellency the Governor of Bombay

VICE-PATRONS

(1) The General Officer Commanding-in-Chief, Southern Army.

(2) Her Highness Rani Parwatibai Saheb Bhonsle, Regent Rani of Sawantwadi.

Chairman

The Commissioner, Central Division.

Members.

(1) The Commissioner, Southern Division,

(2) The Commissioner, Northern Division,

(3) The Commodore, Royal Indian Navy,

(4) Honorary Captain Sardar Bahadur Sakharamrao Jagtap, O.B.I.,

(5) The Assistant Adjutant General of the Military Formation at Poona,

(6) The Collectors and Presidents of all District Sailors', Soldiers' and Airman's Board,

(7) A Viceroy's Commissioned Officer nominated by each of sim District Sailors', Soldiers' and Airmen's Boards selected by the Procincial Board,

(8) The Chief Civil Liaison Officer and the Deputy

Director of Recruiting, Southern Area, Poona
(Ex-Officio Member and Secretary),

(9) The Director of Public Instruction, Province of Bombay.

(10) The Civil Recruiting Officer, Province of Bombay (Co-opted),

(11) The prominent gentlemen representing Commerce and Industry to be nominated by the Patron on the recommendation of the Board,

(12) A lady nominated by the Patron on the recommendation of the Board,

(13) Other Vice-Patrons nominated by the Board in consultation with the Patron and additional members co-opted for particular meetings.

2. In his opinion at page 45 ante, the R.L.A. has observed:

"The Provincial Sailors', Soldiers' and Airmen' Board being unincorporated and as such not being a legal entity and not capable of holding property in its own right could not be deemed to be trustee. Only the individual members comprising the Board such as Commissioner, C.D., Commissioner, S.D., Honorary Capt. Sardar Bahadur Sakharamrao Jagtap, O.B.I., Assistant Adjutant General at Rear Headquarters, Southern Army, Poona, Assistant Director of Recruiting/S.A.Poona, etc. would be trustees/it would be provided that the persons for the time being holding the respective officers held by the members of the Board now constituted would be the trustees of the fund." To secure future succession to the office of trustees

Further in his next opinion No.4949 dated the 6th July 1945 at page 59 ante the R.L.A., opined:

"From the legal point of view there could be no objection to any provision for the appointment of additional members of the Board. The only thing to bear in mind would be that if any additional member is appointed, after the funds have been transferred to the original members, the members to whom the fund have been transferres will have to retarnsfer the same into the joint names of themselves and the newly appointed members.

3. It appears that from the administrative point of view H.D.finds it very inconvenient if ~~nnt~~ difficult to retransfer the fund every time there is a change in the members of the Board, It also considers that the stamp duty on every such transfer would be ~~mx~~ very heavy.

4. The ~~re~~transfer of the trust fund every time there is a change in the members of the Board, will doubtless lead to a good deal of administrative inconvenience. To tide over this difficulty three courses are suggested for consideration :-

(1) to alter the composition of the Board eliminating the members at serial Nos. (7),(11), (12) and (13) and to appoint them on the Board merely a s advisers without any right to vote on any resolution relating to the administration of the funds;

(2) to appoint a small ~~xxx~~ number of persons as trustees and to ~~xxxx~~ vest the funds in them upon trust to administer the same for the benefit of the decorees according to the recommedations of members of an advisory Board; or

(3) to incorpoarte the present Board by legislation

The second courae ~~xxxxxxxx~~ however appears to be simpler. The present Board may remain an unincorporated body for administration but the actual operation of that trust property may be vested in one or two members there of as trustees. In such a case the instrument will have to provide that the trustees

should act on the recommendation of the advisory board constituted by Government.

5. The maximum amount of stamp duty payable under the Bombay Increase of Stamp Duties Act, 1943 would be Rs. 7-8-0 inclusive of the surcharge and it would be competant for Government to pass an order under section (9)(1) of the Indian Stamp Act remitting prospectively or retrospectively the stamp duty on the deed of transfer and retransfer of the trust funds in the present case.

Id/- P.N.M.

14/8/45.

Remembrancer Of Legal Affairs.

H.H. to H.D.No.6062, dated the 14th August 1945.

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Office of the R.L.A.

Para. 4 of H.D. Resolution dated the 21st September 1944 now forwarded by H.D. does furnish an indication to create trusts in respect of the various amounts to be set apart for the decorees. This coupled with the transfer of the funds to the Chairman or members of the Board would constitute a valid legal trust. In the circumstances it is not necessary to alter the wording of the Government Resolution in question.

Regarding thesecond point raised by H.D. the proposed amendment would only effect a change as regards the persons or bodies by whom the additional members of the Board are to be nominated. It will not dispense with the necessity of vesting the funds in the new members, when appointed, assuming that such newly appointed.

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members are also to act as trustees. If from the administrative point of view much trouble would be involved in vesting the funds from time to time in all the persons who for the time ~~shaving~~ being might happen to be the members of the Board, then the only feasible alternative is to vest the funds in the original members, and to allow the additional members to function only in an advisory or consultative capacity.

Sd/- 23/7/45

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Remembrancer of Legal Affairs.

U.R.to H.D.(Spl) No. 24/P dated the 24th July, 1945.

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Office of the R.L.A.

It appears that Government has now decided to appoint the Commissioner, C.D., and Chairman, Bombay Provincial Sailors', Soldiers' & Airman's Board as sole trustee for the administration of the cash rewards to the decorees. The questions raised for the consideration of the R.L.A. are:-

(1) Whether any instrument would be necessary to create a valid trust.

(2) Whether any stamp duty would be necessary.

(3) Whether once the draft G.R. at page 73 ante is issued or/and the instrument of trust executed it will not be necessary to publish in the Gazette Government Orders in which payment of cash rewards to individual members of the Defence Services through the Bombay Provincial Soldiers' Board have already been issued or will in future be issued.

2. Section 5 of the Indian Trusts Act, 1882, provides that no trust in relation to moveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee or unless the ownership of the property is transferred to the trustee. Either of the two things viz. a written declaration or transfer of ownership of the property would be enough to create a valid trust. A Resolution issued by Government declaring the

constitution of a trust in favour of each decree and transferring the cash reward to the Commissioner, C.D?, Chairman of the Soldiers' Board for administration would amount to an instrument in writing declaring the trust and be exempt from stamp duty under proviso (1) to section 3 of the Indian Stamp Act, 1899. No formal language is necessary to constitute an effective declaration of trust; it must however be clear enough to show an intention to create a trust A Government Resolution would be enough for the purpose and no separate instrument would be necessary.

3. The Government Resolution must state the appointment of MR. ....., the present Commissioner, C.D. and his successor in office as trustee and set out clearly the directions regarding the purpose of the trust, the trust property and the beneficiaries. A vague statement that the Commissioner, C.D. should hold the amounts in trust for the decorees and their families would not be enough. It must contain specific directions viz. whether the corpus is to be ultilized or whether only the income is to be paid to the beneficiaries and inthat manner. It must also state definitely who the beneficiaries. are. In short, the purpose of thetrust, property and the beneficiaries must be clearly stated in the Government Resolution in such a manner that there could be no difficulty in the administration thereof.

4. The Government Resolution should also contain a provision that it will be open to the Commissioner, C.D., as such trustee to consult and act on the advice of the Bombay Provincial Sailors' Soldiers' & Airmen's Board

5. A Government Resolution declaring the trust and appointing the present Commissioner, C.D., and his successor in office as trustee would be necessary in each case. No publicaa tion in Government Gazette of such Resolutions would be necessary. If the Government orders already issued are not in order with regard to the appointment of the trustee and the trust property, beneficiaries and the directions about the administration of the trust, fresh orders would he necessary. The publication of the draft G.R. at page 73 ante will serve no purpose.

P.N.M.
30/11/45.

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Remembrancer of Legal Affairs.

U.R.to H.D.(Spl.), No. 8980, dated the 1st December 1945.

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Office of the R.L.A.

The presumptions made by Secy. H.D. in his note dated 20-12-1945 are correct.

The Draft G.R.at page 81 ante requires to be modified. The Bombay Provincial S.S.& A's Board not being a corporate body, it appears necessary to appoint the Commissioner C.D. as trustee with power to administer the trust funds in consultaion with the Board, The draft G.R. as amended is in order. The portion marked A of the draft G.R. at p. 81 of H.D. file is a recital of a previous G.R.dated 21-9-44. The operative part of the present draft G.R. beginning with the words "With a view to implementing this decision etc. " is not in consonance with the provisions of the said previous G.R. Para. 4 of the said G.R. dated 21-9-44 should be amended so as to read as follows:-

"The cash amounts of Rs.10,000, 7,500 and 2,000 mentioned in the preceeding paragraph should not be paid direct to the decreas but to the Commissioner C.D. and Chairman of the Bombay Provincial Sailors' Soldiers' and Airmen's Board who shall hold the amounts in trust" etc.

~~[illegible]~~

When the said F.R. has been so amended as afore-

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said the recital thereof contained in the proposed draft

G.R. would be in order.

P.N.M?
7/1/46

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Remembrancer of Legal Affairs.

U.R.to H.D.(Spl.) No. 133, dated the 7th

January 1946.

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Office of the R.L.A.

It appears that Secretary, H.D. desires to have R.L.A.'s advice to-day on the following questions :-

(1) Whether it is feasible toname, instead of the Commissioner, C.D., the Chairman PS.S.A. Board as trustee in virtue of the latter's office.

(2) Whether in the alternative it is feasible to appoint Commissioner, C.D. as trustee contingently on hisremaining Chairman P.S.S.A. Board, and in the event of his ceasing to be Chairman to take power to Government for appointment of new trustee in his place, if so are may legal difficulties likely to arise in the matter of vesting and revesting of trust property?

2. Question (1): The Bombay Provincial Sailors, Soldiers and Airmen's Board being not a corporate body is not alegal entity and consequently the Chairman of that Board cannot be appointed as trustees.

3. Question (2): Section 46 of the Indian Trusts Act, 1882, provides that a trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of Original Jurisdiction, or (b) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust. Under section 71

the trustee may be discharged from his office only as follows :-

(a) by the extinction of the trust;

(b) by the completion of his duties under the trust;

(c) by such means as may be prescribed by the instrument of trust;

(d) by appointment under this Act of a new trustee in his place;

(e) by consent of himself and the beneficiary or where there are more beneficiaries than one, all the benefifiaries being competent to contract, or

(f) by the court to which a petition for his discharge is presented under this Act.

Under section 73 whenever any person appointed desires to be discharged from the trust may a new trustee may be appointed in his place by the person nominated for that purpose by the instrument of trust. It is clear from these provisions that except so far as authorised by stature or by instrument if any creating the trust by a valid appointment of another trustee in his place, a trustee can only retire during the continuance of a trust. (See Halsbury Vol. 33 p.210). There appears therefore no objection to providing in the instrument of trust appointing Commissioner, C.D. as trustee contingently on his remaining Chairman, P.S.S.A. Board that is [illegible] long as he remains Chairman of P.S.S.A. Board and in the [illegible] of his ceasing to be

Chairman to take power to Government for appointment of new trustee in his place.

4. Section 75 of the Indian Trusts Act provides that whenever any new trustee is appointed under section 73 or section 74, all the trust porperty for the time being vested in the surviving or continuing trusteesor trustee, of in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require. Consequently whenever Government appoints a new trustee in virtue of power vested for that purpose by the instrument of trust there will be no difficulty of vesting and revesting of trust property.

Since the case would not be submitted to the R.L.A. he is not responsible for this opinion.

Id/- R.T.K.

Assistant Remembrancer of Legal Affairs.

U.R. ro H&D. NO. 475, dated the 18th January 1946.

"True copy - Original papers being of bad quality - Destroyed."

K.Welarkar
Superintendent,
MM 10/7- D Branch, Legal Department.